The Conclusiveness of an Administrative Determination in a Later, Independent, Judicial Proceeding

The general problem of the conclusiveness of an administrative determination falls into three categories: (1) the power of administrative officer or tribunal to change a prior determination in further dealings with the same cause of action or controversy; (2) the effect of such prior determinations in a subsequent judicial proceeding relating to the same controversy or relief, *i.e.*, a judicial collateral attack; and (3) their effect on a later judicial or administrative decision of a wholly independent controversy.[1]

In addition to the above, there exists the related problem of the finality of an administrative determination when challenged on judicial review. This particular problem, however, has received substantial attention in legal periodicals and therefore will not be discussed here. In similar fashion, though to a lesser degree, attention has been directed to those areas described in (1) and (2) above.[2] Relatively little attention, however, has been devoted to the question of the conclusiveness of an administrative determination in a subsequent independent judicial proceeding.

The present discussion will therefore be confined to this topic. Thus the question to be considered here is whether the doctrine of res judicata attaches to an administrative determination in such a manner that further inquiry will be precluded when the same issue arises in a subsequent independent judicial proceeding. The effect of the doctrine of res judicata is that an existing final judgment or decree rendered on the merits and without fraud or collusion by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all other actions or suits in the same or other tribunals. The two bases of the doctrine are: (1) the interest of the state that there should be an end to litigation; and (2) the hardship on the individual if he should be vexed twice for the same cause.[3]

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[1] Griswold, *Res Judicata in Administrative Law*, 49 YALE L. J. 1250, 1252 (1940); *Quare*, whether (2) would not be classified as a direct attack under the RESTATEMENT, JUDGMENTS § 11 (1942).

[2] Griswold, *op. cit. supra;* Schopflocher, *The Doctrine of Res Judicata in Administrative Law* (1942) WIS. L. REV. 38; Brown, *Administrative Commissions and Judicial Power*, 19 MINN. L. REV. 261 (1935); Davis, *Res Judicata in Administrative Law*, 25 TEXAS L. REV. 199 (1947).

[3] Pelham Hall Co. v. Carney, 27 F. Supp. 388 (D. C. Mass. 1939), *affirmed*, 111 F. 2d 944.

Do these underlying reasons call for the application of the doctrine of res judicata to the decisions of an administrative tribunal when such are involved in a subsequent independent judicial proceedings? The answer appears to be both yes and no, depending upon the nature of the function which is exercised by the administrative tribunal in arriving at the decision involved. The traditionally accepted rule is that if the administrative body exercises a function judicial in nature, then its decisions will be given the effect of res judicata. On the other hand, if its function is legislative or executive in nature, no such effect will be given. It is to be noted that this is the same test used by the courts, both state and federal, in determining whether or not a prior administrative determination will be res judicata in a later administrative proceeding[4] or in a later related judicial proceeding,[5] the areas described above as (1) and (2) respectively.

As expresed above, the question depends upon, not the character of the body, but rather upon the character of the proceedings in arriving at the determination.[6] Therefore some determinations of an administrative tribunal will have the effect of res judicata while other decisions of the same tribunal will not. This point is well illustrated in *Arizona Grocery Co. v. Atcheson, Topeka & Santa Fe Ry. Co.*,[7] wherein the court, with reference to a decision of the Interstate Commerce Commission, pointed out that when the commission prescribes a maximum reasonable rate for the future it is performing a legislative function, and that when it awards a reparation it is performing a judicial function. In consequence thereof, the court said that the effect of res judicata will be given to a reparations decision but that no such effect will be given to a rate-making decision.

Although the generally accepted rule requires that a distinction be made between functions "judicial in nature" and those "legislative in nature," many courts are content to merely state that the function performed was one or the other without any attempt to reveal the basis for that particular conclusion. Mr. Justice Holmes, however, has defined the two types of functions as follows: "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts, and under laws supposed already

[4] Steward v. Industrial Commission, 69 Ariz. 159, 211 P. 2d 217 (1950); Pearson v. Williams, 202 U.S. 281 (1906).

[5] Prentis v. Atlantic Coast Line Co., 211 U.S. 210 (1908); Keller v. Texas Employers' Ins. Ass'n., 279 S. W. 1113 (1926); American Life Ins. Co. v. Bolmor, 238 Mich. 580, 214 N. W. 208 (1927).

[6] Prentis v. Atlantic Coast Line Co., *supra*, note 5.

[7] Arizona Grocery Co. v. Atcheson, Topeka and Santa Fe Ry. Co., 284 U.S. 370 (1932).

to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." Under this distinction, he concluded that "the establishment of a rate is the making of a rule for the future, and therefore not judicial in kind."

The cases in which the problem of whether a prior administrative determination is to be given the effect of res judicata in a later independent judicial inquiry has been dealt with are relatively few. Among these cases are the determinations of workmen's compensation commissions. Most courts, both state and federal, hold that these commissions perform functions of a "quasi-judicial" nature, and in consequence thereof give the effect of res judicata to their decisions when such are involved in a later judicial proceeding.[8] In *Mangani v. Hydro*,[9] an action was brought to recover for injuries sustained while the plaintiff was allegedly serving as a casual employee of the defendant. The court held that the prior determination of the New Jersey Workmen's Compensation Commission—which dismissed his application for compensation for the same injury—to the effect that he was regularly employed by the defendant and that the injury was not caused by the accident, was a binding adjudication which was conclusive on the issue of whether or not the plaintiff was a mere casual employee and so precluded the plaintiff from maintaining the action. The court expressly dealt with the res judicata issue and said: "A finding and determination by the bureau is essentially a final judgment, and may properly be pleaded as a basis for the application of the doctrine of res judicata." In *Valisano v. Chicago and N. W. R. Co.*,[10] it was held that the decision of the workmen's compensation board denying an award based on a finding of "no proof of accidental injury" precluded an action at law by the plaintiff for negligence. The court took the view, although the opinion is not clear, that compensation was denied because plaintiff was not injured. A determination by a workmen's compensation board to the effect that the party was not engaged in interstate commerce at the time of injury has been accorded the effect of res judicata and thus the employee was pre-

[8] Landreth v. Wabash R. Co., 153 F. 2d 98 (7th Cir. 1946), *Cert. denied*, 328 U.S. 855; Dennison v. Payne, 293 Fed. 333 (2d Cir. 1923); Trupasse v. McKee Lighter Co., 79 F. Supp. 641 (D.C. Mass. 1949); Guy F. Atkinson Co. v. Kinsey, 61 Ariz. 127, 144 P. 2d 547 (1944); Hysteam Coal Corp. v. Ingram, 283 Ky. 411, 141 S. W. 2d 570 (1940); Mangani v. Hydro, 119 N. J. L. 71, 194 Atl. 264 (1937); Royal Indemnity Co. v. Keller, 256 N. Y. 322, 176 N. E. 410 (1931); Valisano v. Chicago and N. W. R. Co., 247 Mich. 301, 225 N. W. 607 (1929).

[9] Mangani v. Hydro, *supra*, note 8.

[10] Valisano v. Chicago and N. W. R. Co., 247 Mich. 301, 225 N. W. 607 (1929).

cluded from suing under the Federal Employers' Liability Act on the theory that he was engaged in interstate commerce.[11]

In similar fashion, the same conclusive effect has been given to the determinations of such a board that the employment of a minor was hazardous. In *Besonen v. Campbell*,[12] the court held that a prior decision of a compensation board denying recovery on the ground that the employment of the minor was illegal because hazardous estopped the employer in a subsequent suit at law under the Michigan Survival and Death Acts from asserting that the employment was not hazardous. It has, however, been held that a decision of the workmen's compensation board finding that the injury did not arise in the course of the employment did not preclude the employer from raising in a subsequent action at law for negligence the defense that the injury was in the course of the employment. The court here indicated that the rulings of the compensation board were binding on the plaintiff but not on the defendant. It justified this questionable distinction with the axiom that "the plaintiff goes into court voluntarily while the defendant is lugged in."[13]

A federal district court in a recent case, however, has refused to give conclusive effect to the decision of a workmen's compensation bureau. The conclusion was reached by the argument that since a determination of an administrative agency is not res judicata in another administrative proceeding "it inescapably follows, *a fortiori*, that such a determination is not res judicata in a later judicial proceeding." Both the premise and the conclusion are contrary to the weight of authority.[14]

Another type of administrative determination to be considered is that made by the United States Land Office in issuing a patent for public land. The issuance of a patent has been held to be conclusive of the legal title. This result is based upon the principle that "when the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority is conclusive." Under this principle it has been held that the action of the land office is conclusive of the legal title, and that this title controls in all forms of judicial proceedings.[15]

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[11] Landreth v. Wabash R. Co., *supra*, note 8. *Accord:* Dennison v. Payne, *supra*, note 8.

[12] Besonen v. Campbell, 243 Mich. 309, 220 N. W. 301 (1928).

[13] Blain v. Huttig Sash Door Co., 105 S. W. 2d 946 (Mo. 1937).

[14] Segal v. Travelers Ins. Co., 94 F. Supp. 123 (1950).

[15] Johnson v. Towsley, 13 Wall 72 (1871); Jordon v. O'Brien, 70 S. D. 393, 18 N. W. 2d 30 (1945). The case of Johnson v. Towsley lays down an exception, recognized by the Jordon case, that "a court of equity has judicial authority to inquire whether the patent has been issued through fraud, false swearing or mistake, or in violation of the law, and to give an appropriate remedy."

The result is different, however, when we turn to the rent regulations and orders of the Office of Price Administration. Such regulations and orders have been held to be legislative and administrative in nature, and therefore the fact findings on which they are based were denied conclusive effect.[16] It has likewise been held that a United States Commissioner's determination as to the legality of a search and seizure under a particular set of circumstances is not conclusive. In reaching this conclusion, the court resorted to the traditional approach of analyzing his functions to determine whether they were judicial or non-judicial in nature. Having found the latter to be the case, the determination was denied conclusive effect.[17] The efect of res judicata has been denied the determinations of a milk control board,[18] as well as that of a county fiscal court.[19] In neither case, however, did the court discuss the reason for its conclusion.

Another type of determination to be considered is that made by the Federal Trade Commission. The decisions of this body are given conclusive effect. Under the Federal Trade Commission Act, as originally enacted, no time was set within which an aggrieved party was permitted to seek judicial review.[20] Under this Act, it was held that the proceedings before the Commission did not result in a final judgment or decree to which the doctrine of res judicata might be applicable. The position was taken that the result of the proceedings was simply an order which had no effect in itself unless made operative by a reviewing court.[21] After the Act had been amended, however, so as to provide that an order of the Commission should be final at the expiration of sixty days if no appeal is taken,[22] the courts have given its determinations conclusive effect. This result is reached, however, without resort to the traditional characterization of the functions involved, as is typical of the workmen's compensation cases. The basis of the decisions lies in the statutory declaration of finality accorded the determinations of the commission. "The purpose of this provision was to bring the doctrine of res judicata into the Federal Trade Commission's jurisprudence."[23]

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[16] Bowles v. Griffin, 151 F. 2d 458 (5th Cir. 1945).

[17] Rothman v. Campbell, 54 F. 2d 103 (S. D. N. Y. 1932).

[18] Milk Control Board of Indiana v. Phend, 104 Ind. App. 196, 9 N. E. 2d 121 (1937).

[19] Alexander v. Alexander, 221 Ky. 439, 298 S. W. 1089 (1927).

[20] 38 STAT. 719 c. 311, 15 U. S. C. A. § 45.

[21] Proper v. John Bene and Sons, 295 Fed. 729 (E D. N. Y. 1923).

[22] 15 U. S. C. A. 45 (c) (g), 4 F. C. A. TITLE 15, § 45 (c) (g). This provision was added by Act of March 21, 1938, c 49, § 3, 52 STAT. 111.

[23] U.S. v. Willard Tablet Co., 141 F. 2d 141 (7th Cir. 1944).

The issue was squarely met in *United States v. Willard Tablet Co.*[24] The question raised was whether the prior determination of the Fedreal Trade Commission was determinative of the issues involved in the present action. The government had sued to condemn a quantity of Willard's Tablets on the ground that the labeling thereof was false. In a prior proceeding, the Federal Trade Commission had given its approval to this labeling. The defendant therefore pleaded the defense of res judicata, which was sustained. The government contended, among other things, that because the statute gave the Commission the power of modification, this power left the unappealed order without that finality essential to invoke the res judicata doctrine. This contention, however, was rejected.

We turn now to the determinations of the National Railroad Adjustment Board. These determinations have likewise been accorded a conclusive effect in a later independent judicial proceeding. Again, this result has been reached without resort to the traditional approach of classifying the functions as judicial or nonjudicial. Instead, the conclusive effect has been reached through use of the theory of election of remedies coupled with the legislative declaration of finality accorded the awards of the Board. In *Kelley v. Nashville, C. & St. L. R. R. Co.*,[25] the plaintiff had been employed under the terms of a collective bargaining contract with a brotherhood of locomotive engineers. The claim was made that he was wrongfully discharged. He submitted his grievance to the National Railroad Adjustment Board for settlement under the provisions of the Railroad Labor Act.[26] Because he had made such a submission it was held that he had made an election of remedies warranting dismissal of his court action based on the same grievance. The court said, "If one who, aggrieved and entitled to the benefits of the Act, places his grievance for adjudication by the Adjustment Board upon merit, his voluntary action thereby fixes exclusive jurisdiction. In other words, such person may take the remedies provided by the Act, or he may bring his suit in a court. He cannot do both. The award of the Board and the judgment of a court are equally final." The decision of *Ramsey v. Chesapeake & Ohio R. R. Co.*[27] was reached on similar reasoning, the effect of res judicata being accorded to the Board's determination as a corollary to the statutory declaration of finality, and not by use of the traditional classification of functions.[28] The traditional classification of functions approach,

[24] U.S. v. Willard Tablet Co., *supra,* note 23.

[25] Kelley v. Nashville, C. and St. L. R. R. Co., 75 F. Supp. 737 (E. D. Tenn. 1948).

[26] Railroad Labor Act, 45 U. S. C. A. 151 *et seq.*

[27] Ramsey v. Chesapeake and O. R. Co., 75 F. Supp. 740 (N. D. Ohio 1948).

[28] *Accord:* Williams v. Atcheson and S. F. R. Co., 356 Mo. 985, 204 S. W. 2d 693 (1947); Hicks v. Thompson, 207 S. W. 2d 1000 (Texas 1948); Hecox v. Pullman Co., 85 F. Supp. 34 (W. D. Wash. 1949).

however, has been used to accord the decisions of a state railroad commission conclusive effect. Having found that the commission exercised judicial powers, a California court concluded that their final determinations have the formality of judgments of courts of records.[29]

SUMMARY

The characterization of the functions of an administrative agency as "judicial" or "non-judicial," and the subsequent use of this categorization as the criterion for determining whether res judicata effect should be given to that agency's decisions has been vigorously criticized by legal writers. One writer charges that the charcaterization of the action taken by an administrative agency as judicial or non-judicial is nothing more than the announcement of the result which has been reached upon considerations other than the nature of the action itself.[30] Another writer says: "To differentiate the judicial from the administrative by an analysis of the operation performed in carying out the two functions is, as a general proposition, a futile task."[31]

A more moderate view is that the attention of the court should be focused upon reasons for and against a second adjudication of the same or similar issues, and not upon a futile effort to tag functions as abstractly judicial or non-judicial.[32] He submits that the best approach is to avoid the labels that have been attached to the various functions for other purposes and to determine what is judicial or non-judicial for purposes of res judicata by emphasizing factors which relate to res judicata. "The question," he says, "is not what is judicial in the abstract or for some other purpose. The question is whether considerations relating to res judicata require that the particular action be regarded as judicial or non-judicial." One text writer, on the other hand, suggests a complete abandonment of the traditional test of characterizing actions as judicial or non-judicial.[33] He charges that the only workable test by which to ascertain whether or not an administrative decision is to be given some or all of the effect of res judicata is the legislative intent. This is to be gathered from the statutes which created the agency whose decision is in issue. Where the statute is silent, the tribunal

[29] Goodspeed v. Great Western Power Co. of Calif., 33 Cal. App. 2d 245, 91 P. 2d 623 (1939), *rehearing denied*, 33 Cal. App. 2d 245, 92 P. 2d 410.

[30] Schopflocher, *The Doctrine of Res Judicata in Administrative Law* [1942], WIS. L. REV. 5, 38.

[31] Brown, *Administrative Commissions and the Judicial Power*, 19 MINN. L. REV. 261, 275 (1935).

[32] Davis, *Res Judicata in Administrative Law*, 25 TEXAS L. REV. 199, 232 (1947).

[33] Schopflocher, *The Doctrine of Res Judicata in Administrative Law, supra*, note 30.

confronted with the issue should apply the available tests for ascertaining implied legislative intent. Cases involving the effect to be given decisions of the Federal Trade Commission and the old Board of Tax Appeals are excellent illustrations of the application of his suggestion. Prior to the time the statutes made their respective decisions "final" and "conclusive," the courts refused to give conclusive effect to such decisions. However, when the statutes were later amended so as to make their respective decisions "final" and "conclusive," such conclusive effect has been given.[34]

Irrespective of the criticism leveled at the use of the traditional test of characterizing functions as judicial or non-judicial, the courts continue to use it. This is especially true of the state courts with regard to decisions of the workmen's compensation boards. The newer approach, however, continues to find more and more use in the federal cases, although the federal courts have not by any means abandoned the use of the traditional test.

Language is occasionally found in the opinions to the effect that "the doctrine of res judicata applies to the judgments of courts, and it is rather doubtful whether it would apply to the decisions of administrative tribunals."[35] Such cases are few, and even here, a close analysis of the opinions will reveal that usually such statements were merely dicta and not necessary to the decision.[36]

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[34] 52 STAT. 111, 113 (1938) 15 U. S. C. § 41 (Supp. 1938). See cases collected in Griswold, *Res Judicata in Federal Tax Cases*, 46 YALE L. J. 1320, 1936 *n.* 33 (1937).

[35] Churchill Tabernacle v. Federal Communications Commissions, 160 F. 2d 244 (D. C. Cir. 1947).

[36] Hoage v. Terminal Refrigerating and Warehousing Co., 78 F 2d 1009 (D. C. Cir. 1935).